United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1066.

80

No. 10, SPECIAL CALENDAR.

JOHN H. MAGRUDER, APPELLANT,

vs.

GRANT B. SCHLEY, ELVERTON R. CHAPMAN, HENRY G. TIMMERMAN, GEORGE F. CASILEAR, AND T. PERCY MYERS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 28, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 14, 1901.

In the Court of Appeals of the District of Columbia.

JOHN H. MAGRUDER, Appellant,
vs.
GRANT B. SCHLEY ET AL. } No. 1066.

a Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } No. 21895. In Equity.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill, &c.*

Filed November 24, 1900.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY, ELVERTON R. CHAPMAN, Henry G. Timmerman, George F. Casilear, and T. Percy Myers. } In Equity. No. 21895.

To the honorable the justice of said court, holding a special term in equity:

The complainant, John H. Magruder, respectfully represents as follows:

1. That he is a citizen of the United States and a resident of the District of Columbia and sues in his own right.

2. The defendants, except the defendant T. Percy Myers, on information and belief are charged to be residents of the city of New York, State of New York, and are sued in their own right and as partners trading under the firm name of Moore & Schley. The defendant T. Percy Myers is a resident of the District of Columbia and is sued as the agent and attorney of the other defendants for the prosecution in their name and in their behalf of a certain action at law hereinafter mentioned.

3. That in or about the month of May, 1896, one Theron C. Crawford was engaged in promoting the sale of shares of stock in the Voelker Light Company, a corporation then recently organ-
2 ized under the laws of the State of New Jersey, the par value of whose shares was and is one hundred dollars a share, but the actual or market value thereof was at the time aforesaid and still is uncertain and prospective, such value being entirely dependent upon the success of the patented lamp or light owned by said corporation, which at that time had not been established and has not yet, as affiant verily believes, been established, and probably will never be established. The said Crawford was then and for some time thereafter the vice-president of said corporation.

4. That, on or about the said last-mentioned date, said Crawford, being in the city of Washington, approached complainant for the purpose of selling him some of said shares of stock. Complainant was assured by said Crawford, as an inducement to him to purchase said stock, that it would soon become very valuable, and that he, Crawford, would accept complainant's promissory note in payment thereof on condition that if, when said note became due, affiant did not want said stock or did not feel able to pay said note he, Crawford, would take back said stock and return said note. Said Crawford was so persistent and, apparently, earnest in his assurances as to the value of said stock that complainant was thereby induced to accept the offer of said Crawford and to pass to him upon the terms and conditions aforesaid his promissory note, dated May 26th, 1896, and payable in ten months for one thousand dollars in payment of forty shares of said stock of the par value of one hundred dollars a share, and to receive as evidence thereof a certificate of stock for said forty shares.

5. That shortly before said note became due complainant
3 informed said Crawford, by letter addressed to him at New York city, that he, complainant, would not be able to pay said note, and that he would surrender said stock. Thereupon said Crawford addressed a letter to complainant from said city of New York, informing complainant for the first time that the defendant Chapman, of the said firm of Moore & Schley, had "cashed" the note, but that he, Chapman, had seen him and arranged to have the stock deposited, with a renewal note of thirty days, with said firm, and further stating in said letter that "if at the end of thirty days you" (meaning complainant) "are unable to meet the note, I will take back the stock and pay the note." In accordance with said letter and promise complainant executed a new note, dated March 29, 1897, for $1,050, payable in thirty days, and attached the certificate of stock thereto as collateral and delivered the same to Messrs. Lewis Johnson & Company, bankers, of the city of Washington, and the then agents and correspondents of said firm of Moore and Schley.

6. Thereafter, and before said note became due, complainant again wrote to said Crawford that he would not be able to pay it and that he, complainant, surrendered said stock according to the terms of the agreement of said Crawford. Complainant thereafter heard no

more from said Crawford nor any one else concerning said note and stock, nor was any demand thereafter made upon him by any one for the payment of said note, nor was any communication, by letter or otherwise, made to him by said Crawford, or by said Chapman, or by said firm of Moore & Schley, or by any one else concerning said note until three years lacking about one month thereafter, as hereinafter stated. Complainant therefore rested during said period in the full belief that the said Crawford had complied with the
4 terms of his agreement and taken back said stock and paid said note, accordingly complainant dismissed the matter from his mind as a settled transaction.

7. In or about the month of February or March, 1900, complainant received a communication from the defendant T. Percy Myers, who is a member of the bar of this court, informing him that said note had been placed in his, said Myers', hands by the said firm of Moore & Schley for collection and demanding payment thereof, which demand complainant refused to comply with for the reasons hereinafter stated.

8. Thereafter said Myers, on the 14th day of April, 1900, as attorney for said firm of Moore & Schley, brought an action in assumpsit upon the law side of this court in the name of the said members of said firm and attached to the declaration an affidavit in compliance with the 73rd common-law rule of this court. To said action complainant filed a plea denying the alleged indebtedness, and accompanied said plea with an affidavit of defence under said rule 73. True copies of said declaration, affidavits, and of the entire proceedings to final judgment and the affirmance thereof by the Court of Appeals of this District, so far as the said proceedings are necessary to be known by this court, are filed with this bill as part thereof and marked Exhibit J. H. M. No. 1, and leave is prayed to refer to and read the same as often as may be necessary.

9. On the filing of the plea and affidavit of defence, as aforesaid, the plaintiffs in said action, by their attorney, said Myers, moved the court for judgment notwithstanding said plea and affi-
5 davit. Thereupon, to wit, on the 25th of May, 1900, on the hearing of said motion, but before judgment, leave was granted the defendant in said action to amend his affidavit of defence within ten days, but on the next day the plaintiffs, by their said attorney, moved to vacate the order granting leave to amend and to enter judgment, which motion on the hearing thereof was granted and judgment was entered against the defendant (who is the complainant herein, as aforesaid) for the sum of one thousand and fifty dollars and fifty cents, with interest thereon from the 29th day of March, 1897. In the same order directing the entry of said judgment leave was granted the defendant (complainant herein) to move within five days to vacate said judgment and for leave to file an amended affidavit. Accordingly, within five days thereafter, this complainant, as defendant in said action, moved to vacate said judgment and to file the amended affidavit of defence annexed to said motion, a true copy of which said amended affidavit will be

found in said Exhibit J. H. M. No. 1, and is prayed to be taken as part hereof. The court, however, refused to grant said motion, and thereupon, the said judgment standing against complainant, he appealed from the ruling of said court in refusing to allow said amended affidavit to be filed, and also from the action of the court in entering said judgment.

10. On the submission in due course of said appeal to the Court of Appeals of said District the said court, after considering the same, rendered its decision affirming said judgment for the reason stated in its opinion, which is hereby referred to and made part hereof.

By said opinion it appears that the Court of Appeals was, by
6 reason of the legal precedents and rules of practice and procedure governing said court in the administration of the law as distinguished from the administration of equity, precluded from considering the facts set forth in said amended affidavit, but was confined solely to the consideration of the original affidavit, the said court holding that the action of the court below in refusing to allow the amendment of said affidavit was unappealable. It thereupon proceeded to consider the sufficiency of the original affidavit, and, finding the same in its judgment insufficient under said 73rd rule, affirmed the judgment below.

11. Complainant avers that he expects to be able to prove the facts set forth in said amended affidavit, and to show to this court that the affidavit of said Chapman, annexed to the said declaration, in so far as it avers the plaintiffs in said action to be *bona fide* endorsees for value in the usual course of business of said note, is without foundation in fact and well known to the said Chapman so to be, and therefore that said *affiant* was an imposition upon the court and induced it to render said judgment against complainant.

12. Complainant verily believes, and so believing charges and avers and expects to be able to prove, that the whole transaction in respect to the sale of said stock to complainant by said Crawford, the obtaining of the original note by him from complainant, and the renewal thereof were a fraud upon complainant by said Crawford, who, with said Chapman, was promoting the sale of the stock of said Voelker Light Company; that said Crawford was not the owner of

said stock so, as aforesaid, proposed to be sold to complainant,
7 but was really the property of said light company or of said Chapman, for one or the other of whom said Crawford was acting in the disposal thereof; that if any money was really advanced upon said stock by said firm of Moore & Schley, it was done at the request and with the knowledge of said Chapman, one of the said firm, for the benefit of either the said Chapman or of said light company, and complainant verily believes and expects to be able to show, and therefore, so believing, charges, that said Chapman had full knowledge, either actual or constructive, of the arrangement and understanding had by complainant with said Crawford, agent as aforesaid, in regard to the terms upon which said stock was sold and said note of renewal given, and that the reason why no demand nor communication whatever during nearly three years

was made or had with complainant by said Crawford and said Chapman and said firm of Moore & Schley in regard to the non-payment by complainant of said note is that it was well known to said Crawford and Chapman, the latter being treasurer, as aforesaid, of the said corporation and member of the said firm of Moore & Schley, that the contract with the complainant was that he was not to pay said note unless at the time of the maturity thereof he wished to become the owner of said stock, and that the firm of Moore & Schley (if they actually did discount said note, of which alleged fact complainant has no knowledge, and accordingly demands strict proof thereof on the trial of this cause) were fully paid and satisfied by said Crawford or said Chapman or said light company for any advance they, said firm, may have made upon said note or the stock securing the same, and that even if it be true that said firm has not been so paid and satisfied, yet the said firm (being
8 charged with the knowledge of their copartner, Chapman, of the terms and conditions upon which said note was given) is not a *bona fide* purchaser without notice.

13. Complainant further verily believes and expects to be able to prove, and so charges, that said action at law was resorted to by the said Chapman, one of the principal members of the firm aforesaid and treasurer of said corporation, to reimburse himself or his firm for losses subsequently sustained by him or it in other dealings with said Crawford, who, as complainant is informed and believes, and so charges, is now in Europe and left the United States largely indebted to said Chapman or to said firm, and that said Chapman as a member of said firm has been thus wrongfully keeping possession of said note for nearly three years until the bar of the statute of limitations is nearly completed in order that if perchance said stock became worth more than $1,050 he or they might keep it by virtue of this complainant's surrender of the same, and if, on the other hand, it should not so rise in value, then to sue complainant upon the note. Wherefore complainant charges that the keeping of said stock for such a length of time without notice to or demand upon complainant by the said Chapman, member of said firm as aforesaid, was the act of the firm and constituted in equity, if not at law, as to complainant, an acceptance of said stock and should be taken as a conversion of the same to their use in satisfaction of any advances the said firm may have made thereon.

And further that the delay of nearly three years of the said firm of Moore & Schley to notify this defendant that his offer
9 to surrender said stock was not accepted, and the failure to make demand upon him, under all the circumstances, for said period and until after said Crawford had become insolvent and had left the United States, thus depriving complainant of his remedy against him, all constitute such laches upon the part of said firm as in a court of equity should debar them from now enforcing at law their demand against complainant on said note, even if it be true that they were originally *bona fide* holders for value of said note.

14. And complainant further shows that until he shall have the

opportunity of cross-examining the members of said firm or of obtaining discovery from them of all the facts and circumstances in connection with their becoming the holders of said note, and of inquiring into the relations existing between said Crawford and said Chapman and their relations to the said stock, so, as aforesaid, conditionally sold to complainant, he is and was, at the time of making his said affidavit of defence, ignorant of all the facts and circumstances of what he verily believes, and so charges to be, a fraud practiced upon him and the court, and was consequently unable to state upon oath more in said affidavit than was there stated, or than is now stated in this bill.

15. Wherefore complainant is advised that it is inequitable and unjust that he should, under the circumstances hereinbefore detailed, be deprived in a summary manner of the right to a trial upon the merits wherein he may, by cross-examination or by bill of discovery in and of the defence in said suit at law, search the consciences of the plaintiffs therein as to their relations to the said note and to the said Crawford and the said light company and its stock, and thereby be afforded an opportunity to establish more fully the facts herein detailed and which he verily believes to be true, to wit, that a fraud has been practiced upon him by said Crawford, of which fraud the said firm of Moore & Schley were constructively, if not actually, cognizant at the time of making the said affidavit by defendant Chapman and of the rendition of said judgment.

16. And complainant is further advised that it is inequitable that complainant should be required to pay so large a judgment not rendered against him upon the merits merely because the rules of law have precluded the Court of Appeals from considering the said amended affidavit, and he is advised that this court has the power and jurisdiction to consider said affidavit and to pass upon the sufficiency thereof and the circumstance of the complainant's lack of information possessed only by the said Chapman or by the other members of said firm at the time complainant was compelled to file a counter-affidavit, and also the circumstance of the laches and delay of the said firm in failing, as aforesaid, to inform complainant of the situation and of their demand against him after he had advised said Crawford, the agent, as he verily believes and expects to be able to show, of said firm, of his surrender of the stock according to the terms of his agreement, and complainant is further advised that this court, sitting as a court of equity, has jurisdiction to inquire into the facts by the aid of a jury or otherwise; and if it appear to be true, as is alleged and charged by complainant, that the plaintiffs in said action ought not in equity to be suffered to enforce said judgment against complainant, this court should and will by its decree enjoin the enforcement of the same.

17. Complainant further says that he has made the said T. Percy Myers a defendant to this bill for the reason that the defendants are all non-residents of this District and cannot be served with process except through service upon and notice to said Myers, their agent

and attorney of record, for the enforcement and collection of said judgment, and that said Myers has informed the solicitor of complainant that he, Myers, will not accept said service for said defendants.

Wherefore, the premises considered, complainant prays as follows:

1. That the process of the court issue to the defendants herein, requiring them to appear and answer the exigency of the bill, and that a preliminary injunction or restraining order be issued with and accompanying said process, restraining and enjoining the defendants and each and every of them and their servants, agents, and attorneys from issuing or levying any execution upon said judgment until the further order of the court.

2. That if the said defendants or any of them cannot be served with process by reason of their not being found in said District, service upon their agent and attorney, said T. Percy Myers,
12 be held sufficient to continue said restraining order until such time as they shall appear and answer, and the court upon said answer shall make its further order in the premises.

3. That upon the appearance of said defendants, plaintiffs in said action at law, and the filing of their answers the complainant may, if the allegations of the bill be denied by said answers, have an issue sent to the law court to be tried by a jury, and that upon the return of the verdict to this court such action may be taken as to the court may seem proper.

That complainant may have such further and other relief as the nature of the case may require and to the court may seem meet and proper.

The defendants to this bill of complaint are those persons named in the caption thereof.

JOHN H. MAGRUDER.

FRANKLIN H. MACKEY,
Solicitor for Complainant.
W. W. BOARMAN,
Solicitor for Complainant.

I, John H. Magruder, complainant named in the foregoing bill of complaint, and whose name is signed thereto, solemnly swear that I have read the same and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

JOHN H. MAGRUDER.

13 Subscribed and sworn to before me this 22d day of November, A. D. 1900.

EUGENE D. CARUSI,
Notary Public.

[SEAL.]

Subpœna.

Issued November 24, 1900.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER, Complainant,
against
GRANT B. SCHLEY ET AL., Defendants. } No. 21895, Equity Docket.

The President of the United States to Grant B. Schley, Elverton H. Chapman, Henry G. Timmerman, George F. Casilear, and T. Percy Myers, defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigencies of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness the Honorable Edward F. Bingham, chief justice of said court, the 24 day of November, A. D. 1900.

[SEAL.] JOHN R. YOUNG, *Clerk.*

14 MEMORANDUM.—That the defendant- herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returned; otherwise the bill may be taken for confessed.

Restraining Order upon the Complainant Filing Undertaking as Required by Equity Rule 42.

The defendants are hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 4th day of December, 1900, of which take notice.

By the court:

JOB BARNARD, *Justice.*

November 24th, 1900.

Marshal's Return.

Summoned defendant T. Percy Myers, personally, and served him with copy of restraining order in this cause at 11 o'clock a. m., Nov. 24, 1900.

AULICK PALMER, *Marshal.*
B.

15 *Motion to Discharge Restraining Order.*

Filed December 3, 1900.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21895.

Now comes the defendant T. Percy Myers *in propria persona* and moves the court to discharge the restraining order passed in this cause on the 24th day of November, 1900, and to dismiss the bill of complaint with costs for the following reasons, to wit:

1. That the facts set forth and the case stated in the complainant's bill of complaint are wholly insufficient to give a court of equity jurisdiction in the premises.

2. That the matters and facts stated in the complainant's bill of complaint are *res judicata* as between the complainant and the defendants.

3. That the defendant T. Percy Myers is not a proper party to the cause.

4. That the complainant has not served upon the defendant T. Percy Myers a copy of the bill of complaint as required by equity rule No. 48 of the rules of practice of the supreme court of the District of Columbia.

T. PERCY MYERS, *P. P.*

Service acknowledged.

F. H. MACKEY,
W. W. BOARMAN,
For Compl'ts.

Dec. 3, 1900.

16 *Order Overruling Motion to Discharge Restraining Order, &c.*

Filed December 4, 1900.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21895.

This cause coming on to be heard upon the motion of the defendant Myers to discharge the restraining order passed herein and to dismiss the bill of complaint, and counsel having been heard and the matter considered by the court, it is, this 4th day of December, A. D. 1900, adjudged, ordered, and decreed that said motion be, and the same is hereby, overruled, and the said restraining order is hereby continued until the final hearing of the cause, provided the

plaintiff give the undertaking provided for by rule 42 of the court within ten days.

JOB BARNARD, *Justice.*

Memorandum.

Dec. 10, 1900.—Injunction undertaking filed.

J. R. YOUNG, *Clerk.*

17 *Answer of Defendant T. Percy Myers.*

Filed January 8, 1901.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21896.

5

To the honorable justice of the supreme court of the District of Columbia:

Now comes the defendant T. Percy Myers *in propria persona* and now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception to be taken by demurrer, plea, or otherwise, which can or may be had or taken to the many errors, uncertainties, or other imperfections in the complainant's bill of complaint contained, for answer to the said bill of complaint says:

1. For answer to paragraph one of the bill of complaint this defendant admits the averments therein contained.

2. For answer to paragraph two this defendant admits the averments therein contained.

3. For answer to paragraph three this defendant, having no personal knowledge of the facts therein alleged and set forth, calls for strict proof of the same.

4. For answer to paragraph four this defendant, having no personal knowledge of the facts therein alleged and set forth, calls for strict proof of the same.

18 5. For answer to paragraph five this defendant, having no personal knowledge of the facts therein alleged and set forth, calls for strict proof of the same.

6. For answer to paragraph six this defendant, having no personal knowledge of the facts therein alleged and set forth, calls for strict proof of the same.

7. For answer to paragraph seven this defendant admits the averments therein contained.

8. For answer to paragraph eight this defendant admits the averments therein contained.

9. For answer to paragraph nine this defendant admits the averments therein contained.

10. For answer to paragraph ten this defendant submits that the averments therein set forth state a conclusion of law, the correctness of which conclusion of law this defendant denies.

11. For answer to paragraph eleven this defendant says that he is informed and believes, and so believing charges, that the averments therein set forth are false and untrue.

12. For answer to paragraph twelve this defendant says that he is informed and believes, and so believing charges, that the averments therein contained are false and untrue.

13. For answer to paragraph thirteen this defendant says that he is informed and believes, and so believing charges, that the averments therein set forth are false and untrue, and the conclusions of law therein set forth are contrary to law and equity.

19 14. For answer to paragraph fourteen this defendant says that any ignorance on the part of the complainant of the alleged facts and circumstances set forth in said paragraph was wholly due to the non-existence of said alleged facts and circumstances. This defendant, further answering said paragraph, says that some time prior to February 8th, 1900, and more than two months prior to the bringing of the action at law, the complainant called at the office of this defendant in response to a letter from this defendant to said complainant, requesting a payment of the note, and then and there stated to this defendant substantially the alleged facts and circumstances set forth in said paragraph and the amended affidavit filed in the action at law; that this defendant then and there informed said complainant that this defendant was going to New York within a few days and while there would see Mr Chapman, of Moore and Schley, and ascertain the correctness of said statements; that this defendant did go to New York and submit said statement to Mr. Chapman, and immediately upon the return of this defendant from New York this defendant caused a letter to be written to the complainant in which the answer of Mr. Chapman to the statements was set forth, a press copy of said letter being filed herewith and marked "Defendants' Exhibit T. P. M. No. 1," which is referred to and made part hereof. The original of said letter being in the possession of the complainant, this defendant is unable to produce the same.

This defendant, further answering, says that this defendant had several interviews with both Mr. Boarman and Mr. Mackey,

20 attorneys for complainant, prior to the bringing of the action at law, in which said interviews both of said attorneys stated substantially the same alleged facts and circumstances as being a good defense to the action at law.

This defendant, further answering, says that subsequent to the filing of the action at law and the filing of the original affidavit of defense by the complainant this defendant inquired of Mr. Mackey the reason of the neglect on the part of the complainant to state fully in said affidavit his grounds of defense; to which question Mr. Mackey replied that he did not consider it necessary to state more than a substantial defense under the 73d rule; that the rule did not require

a defendant to disclose the full particulars of his defense to be taken advantage of by the plaintiffs.

15. For answer to paragraph fifteen this defendant submits that the averments therein set forth are conclusions of law.

16. For answer to paragraph sixteen this defendant submits that the averments therein set forth are conclusions of law.

17. For answer to paragraph seventeen this defendant submits that he is not called upon nor required to answer the same.

And, having answered said bill fully, this defendant prays that he may have the same advantage of it as if he had demurred to said bill, and that he may be dismissed with costs.

T. PERCY MYERS.

21 DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

T. PERCY MYERS.

Subscribed and sworn to before me this 8th day of January, A. D. 1901.

J. R. YOUNG, *Clerk,*
By L. P. WILLIAMS, *Ass't Clerk.*

22 "DEFENDANT T. P. M. EXHIBIT NO. 1."

FEBRUARY 8TH, 1900.

John H. Magruder, Esq., city.

DEAR SIR: I beg to say that I saw Mr. Chapman in New York yesterday and had a lengthy talk with him in relation to the matter of your note for $1,050.50, held by Moore & Schley. He emphatically denies there was ever any agreement that Moore & Schley would take the stock for the note. He further claims that he was assured that the note would be paid at maturity. He claims that the note was discounted for Mr. Crawford, and that Moore & Schley were not a party to any agreement or understanding that you might have had with Mr. Crawford. As I predicted, his explanation of the delay in demanding payment was wholly due to the fact that he supposed the note had been paid or suit entered long before this. He was very much surprised on examination of the affairs of the firm on the first of the year to find the note had not been paid or suit entered, and he gave instructions that the matter be sent to me at once. They have instructed me to demand payment of the note and if the same is refused to enter suit.

I would be pleased to have you call and see me in reference to the matter, as I hope we can arrange a settlement without suit.

Very truly yours, T. PERCY MYERS.

23 *Motion to Correct Order of December* 4, 1900.

Filed January 21, 1901.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21895.

Now come the defendants, by their solicitor, T. Percy Myers, and move the court to amend and correct the order passed in this cause on the 4th day of December, A. D. 1900, in the following manner, to wit, to strike out the words "until the final hearing of the cause" and insert in the place and stead thereof the words "until the further order of the court," in accordance with the decision of the court on said date in these proceedings made.

T. PERCY MYERS,
Solicitor for Defendants.

To Messrs. Franklin H. Mackey, William W. Boarman, solicitors for complainant:

Please take notice that I shall call the above motion for the action of the court thereon before Mr. Justice Barnard on Thursday, January 17th, 1901, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

T. PERCY MYERS,
Solicitor for Defendants.

24 Service acknowledged.

W. W. BOARMAN,
F. H. MACKEY,
Solicitors for Complainant.

January 14, 1901.

Order Amending Order of December 4.

Filed January 29, 1901.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. 21895.

Upon motion of the defendants, by their solicitor, T. Percy Myers, it is by the court, this 29th day of January, A. D. 1901, ordered that the order passed in this cause on the 4th day of December, 1900, be, and the same is hereby, amended so as to continue the restraining order herein "until the further order of the court," instead of "until the final hearing of the cause," as provided in said order of December 4th.

JOB BARNARD, *Justice.*

25 *Answer of Elverton R. Chapman.*

Filed February 5, 1901.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21895.

To the honorable justice of the supreme court of the District of Columbia, holding an equity court:

Now comes the defendant Elverton R. Chapman, and now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception, to be taken by demurrer, plea, or otherwise, which can or may be taken to the jurisdiction of this honorable court in the premises and to the many errors, uncertainties, or other imperfections in the complainant's bill of complaint contained, for answer to the said bill of complaint, says:

1. For answer to paragraph one, this defendant upon information and belief admits the averments therein contained.

2. For answer to paragraph two, this defendant admits the averments therein contained.

3. For answer to paragraph three, this defendant admits that Theron C. Crawford was the vice-president of the Volker Light Company at or about the date set forth in said paragraph. Further answering said paragraph, this defendant says that he has
26 no personal knowledge of the other facts and averments contained in said paragraph, and can neither admit nor deny the same, and, if material, calls for strict proof.

4. For answer to paragraph four, this defendant denies having any personal knowledge or information of the alleged facts and averments therein contained, and, if material, calls for strict proof of the same.

5. For answer to paragraph five, this defendant denies having any personal knowledge or information of any agreement, communication, or understanding had or existing between the complainant and one Theron C. Crawford in relation to the making, delivery, or renewal of the certain promissory note of the complainant for $1,000, dated May 26th, 1896, and payable ten months after date to the order of said Crawford. This defendant, further answering said paragraph, says that the firm of Moore and Schley, on the 29th day of March, 1897, were the lawful and *bona fide* holders and owners, for value, in the usual course of business, of a certain promissory note of the complainant's, of like tenor, payable to the order of and endorsed by said Crawford, which said note the said firm of Moore & Schley had previously discounted for the said Crawford, upon the faith and credit of the financial and business standing of the complainant, and that the proceeds thereof were delivered to said Crawford personally for his individual account; that at the maturity

of said promissory note the said Crawford requested the said firm of Moore and Schley to renew the same for thirty days; that the said note was then in the hands of Messrs. Lewis Johnson and Company, the Washington correspondents of said firm of
27 Moore & Schley, for collection; that the said firm of Moore and Schley consented to accept a renewal, and the complainant delivered to said Lewis Johnson and Company his certain promissory note, dated March 29th, 1897, payable thirty days after date, to the order of said Crawford, for $1,050; the additional $50 being the accrued interest to that time. The complainant attached to said note an order of T. C. Crawford for 40 shares of the Volker Light Company as collateral security, as evidenced by the memorandum on margin of said promissory note.

6. For answer to paragraph six, this defendant says that he has no personal knowledge or information of the matters and alleged communications and agreements set forth in said paragraph. Further answering said paragraph, as to the matter of the delay in bringing the action at law, says that the said note of complainant for $1,050 was put among the papers of the old firm of Moore & Schley and this defendant's attention was not called to the fact of it not being paid until about January 1, 1900; that this defendant immediately directed that the same be put in the hands of an attorney for collection.

7. For answer to paragraph seven, this defendant upon information and belief admits the averments therein contained.

8. For answer to paragraph eight, this defendant upon information and belief admits the averments therein contained.

9. For answer to paragraph nine, this defendant upon information and belief admits the averments therein contained.

28 10. For answer to paragraph ten, this defendant submits that he is not required to answer the same, for that the averments are statements and conclusions of law.

11. For answer to paragraph eleven, this defendant emphatically and positively denies the averments therein contained, and says that the same are false, scandalous, and impertinent, and prays that the same may be stricken from the record. Further answering said paragraph, this defendant says that the said promissory note of the complainant for $1,000 and the renewal thereof for $1,050 were endorsed and delivered to the firm of Moore & Schley before maturity, *bona fide*, for value and in the usual course of business; that the said firm of Moore and Schley had no notice or intimation whatsoever of any existing equities, agreements, or understanding between the complainant and the said Crawford.

12. For answer to paragraph twelve, this defendant denies any knowledge or information, personal or otherwise, of the sale of any stock of the Volker Light Company by the said Crawford to the complainant, and denies any knowledge or information of the facts, circumstances, or conditions of the making of the said promissory note for $1,000 by the complainant and the delivery of the same to the said Crawford. This defendant denies that he was associated with the said Crawford in promoting the sale of the stock of the Volker

Light Company in any manner whatsoever. This defendant has no personal knowledge or information of the ownership of the stock of the Volker Light Company, alleged to have been sold by the said Crawford to the said complainant, or of the circumstances,
29 terms, or conditions of such alleged sale, if any was made, and particularly denies that the stock was the property of this defendant or the firm of Moore & Schley. This defendant denies that the said Crawford was at any time the agent of this defendant or the firm of Moore & Schley for the sale of stock of the Volker Light Company or for any purpose whatsoever. This defendant denies that the said promissory note of the complainant was discounted by the firm of Moore and Schley at the request of this defendant, but avers that the same was done by direction of the late John G. Moore, Esq., then a member of the firm of Moore and Schley, upon the personal solicitation of said Crawford and for his individual account. This defendant further denies that the money was advanced for the benefit of this defendant or the Volker Light Company, but was advanced for the personal benefit of said Crawford upon his earnest solicitation. This defendant again denies any knowledge or information whatsoever of any agreement, arrangement, or understanding made or existing between the said Crawford and the complainant in relation to said promissory note or notes. This defendant denies that said promissory note of the complainant for $1,050 has been paid in any manner whatsoever, in whole or part.

13. For answer to paragraph thirteen, this defendant denies that said action at law was instituted for the purpose of reimbursing this defendant or the firm of Moore and Schley for losses subsequently sustained by him or it in other dealings with said Crawford. Further answering said paragraph, this defendant submits that he has fully answered the material allegations; that the others are conclusions of law argumentatively stated.

30 14. For answer to paragraph fourteen, this defendant says that, substantially, the alleged facts and defenses set forth in the amended affidavit were submitted to him on behalf of the complainant by T. Percy Myers, Esq., the attorney of the firm of Moore and Schley, some time prior to the filing of the action at law, and then, as now, emphatically denied.

15. For answer to paragraph fifteen, this defendant submits that the averments therein contained are conclusions of law, and as such are untenable.

16. For answer to paragraph sixteen, this defendant submits that the averments therein contained are conclusions of law, and as such are untenable.

17. For answer to paragraph seventeen, this defendant submits that he is not required to answer the same.

And, having fully answered said bill of complaint, this defendant prays that he may have the same advantage of it as if he had demurred to said bill, and that he may be dismissed with costs.

E. R. CHAPMAN.

T. PERCY MYERS, *Solicitor.*

STATE OF NEW YORK,
County and City of New York, } *ss:*

I, Elverton R. Chapman, upon oath say that I have read
31 the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

E. R. CHAPMAN.

Subscribed and sworn to before me this tenth day of January, A. D. 1901.

GEO. R. EVANS,
[SEAL.] *Notary Public, N. Y. County.*

Answer of Defendants Schley et al.

Filed February 5, 1901.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21895.

To the honorable justice of the supreme court of the District of Columbia, holding an equity court:

Now come the defendants Grant B. Schley, Henry G. Timmermann, and George F. Casilear, and now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception to be taken by demurrer, plea, or otherwise, which can or may be taken to the jurisdiction of this honorable court in the premises and to the many errors, uncertainties, or other imperfections in the complainant's bill of complaint contained, for their joint and several answer say:

32 1. For answer to paragraph one, these defendants upon information and belief admit the averments therein contained.

2. For answer to paragraph two, these defendants admit the averments therein contained.

3. For answer to paragraph three, these defendants admit that Thereon C. Crawford was the vice-president of the Volker Light Company at or about the date set forth in said paragraph. Further answering said paragraph, these defendants say that they have no personal knowledge or information of the other facts and averments contained in said paragraph, and can neither admit nor deny the same, but, if material, call for strict proof.

4. For answer to paragraph four, these defendants deny having any personal knowledge or information of the alleged facts and averments therein contained, and, if material, call for strict proof of the same.

5. For answer to paragraph five, these defendants deny any knowledge or information of any agreement, communication, or understanding had or existing between the complainant and one Thereon C. Crawford in relation to the making, delivery, or renewal of the certain promissory note of the complainant for $1,000, dated May 26th, 1896, and payable ten months after date to the order of said Crawford. These defendants, further answering said paragraph, say that the firm of Moore & Schley, on the 29th day of March, 1897, were the lawful and *bona fide* holders and owners for value, in the usual course of business, of
33 a certain promissory note of the complainant, of like tenor, payable to the order of and endorsed by said Crawford, which said note the said firm of Moore and Schley had previously discounted for the said Crawford, as these defendants are informed and believe, upon the faith and credit of the financial and business standing of the complainant, and that the proceeds thereof were delivered to said Crawford personally for his individual account. These defendants, further answering said paragraph, admit that said note was renewed for the period of thirty days, and that the renewal thereof was delivered to Messrs. Lewis Johnson and Company, the Washington correspondents of said firm of Moore and Schley, and that there was attached to said renewal an order of said T. C. Crawford for forty shares of the stock of the Volker Light Company as collateral.

6. For answer to paragraph six, these defendants say that they have no personal knowledge or information of the matters and alleged communications and agreements set forth in said paragraph.

7. For answer to paragraph seven, these defendants upon information and belief admit the averments therein contained.

8. For answer to paragraph eight, these defendants upon information and belief admit the averments therein contained.

9. For answer to paragraph nine, these defendants upon information and belief admit the averments therein contained.

34 10. For answer to paragraph ten, these defendants submit that they are not required to answer the same, for that the averments therein contained are statements and conclusions of law, and as such conclusions are untenable.

11. For answer to paragraph eleven, these defendants deny the averments therein contained, and submit that the same are scandalous and impertinent, and pray that the same may be stricken from the record. Further answering said paragraph, these defendants say that the said promissory note of the complainant for $1,000 and the renewal thereof for $1,050 were endorsed and delivered to the firm of Moore and Schley before maturity, *bona fide*, for value and in the usual course of business; that the said firm of Moore and Schley had no notice, information, or intimation of any existing equities, agreements, or understandings between the complainant and the said Crawford in relation thereto.

12. For answer to paragraph twelve, these defendants deny any knowledge or information of the sale of any stock of the Volker Light Company by the said Crawford to the complainant, and deny

any knowledge or information of the facts, circumstances, or conditions of the making of the note for $1,000 by the complainant, and the delivery of the same to the said Crawford. These defendants deny that said stock was the property of the firm of Moore and Schley. These defendants deny that the said Crawford was the agent of the firm of Moore and Schley for the sale of stock of the Volker Light Company, or for any purpose whatsoever.

35 13. For answer to paragraph thirteen, these defendants deny that the said action at law was instituted for the purpose of reimbursing the firm of Moore and Schley or the defendant Chapman for losses subsequently sustained by it or the defendant Chapman in other dealings with said Crawford. Further answering said paragraph, these defendants submit that they have fully answered the material allegations therein contained; that the others are conclusions of law, argumentatively stated.

14. For answer to paragraph fourteen, these defendants say that they have no knowledge or information of the averments therein contained, but, if material, call for strict proof.

15. For answer to paragraph fifteen, these defendants submit that the averments therein contained are conclusions of law, and as such are untenable.

16. For answer to paragraph sixteen, these defendants submit that the averments therein contained are conclusions of law, and as such are untenable.

17. For answer to paragraph seventeen, these defendants submit that they are not required to answer the same.

And, having fully answered the said bill of complaint, these defendants pray that they may have the same advantage of it as if they had demurred, and that they be dismissed with costs.

GRANT B. SCHLEY.
HENRY G. TIMMERMANN.
GEO. F. CASILEAR.

T. PERCY MYERS, *Solicitor.*

36 STATE OF NEW YORK, }
County and State of New York, } *ss:*

Grant B. Schley, Henry G. Timmerman, and George F. Casilear upon oath say that they have read the foregoing answer, by them subscribed, and know the contents thereof; that the facts therein stated upon their personal knowledge are true, and those stated upon information and belief they believe to be true.

GRANT B. SCHLEY.
HENRY G. TIMMERMANN.
GEO. F. CASILEAR.

Subscribed and sworn to before me this tenth day of January, A. D. 1901.

GEO. R. EVANS,
Notary Public, N. Y. County.

[SEAL.]

Motion to Discharge Restraining Order.

Filed February 8, 1901.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21895.

Now come the defendants, by their solicitor, T. Percy Myers, and move the court to discharge the restraining order passed in
37 this cause on the 24th day of November, 1900, and to dismiss the complainant's bill of complaint filed herein, with costs, for the following reasons, to wit:

1. That the said bill of complaint does not set forth such a case as entitles the complainant to relief in a court of equity.

2. That the matters and things set forth in said bill of complaint are *res adjudicata* as between the complainant and the defendants.

3. That the material and substantial allegations of the complainant's bill of complaint are wholly and particularly denied by the answers of the defendants filed in this cause.

T. PERCY MYERS,
Solicitor for Defendants.

FEBRUARY 7, 1900.

Messrs. Franklin H. Mackey, W. W. Boarman, solicitors for complainant:

Please take notice that I shall call the above motion for the action of the court thereon before Mr. Justice Bradley, in equity court No.—, on Monday, February 11th, 1901, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

T. PERCY MYERS, *Solicitor.*

Service acknowledged February 7, 1901.

W. W. BOARMAN,
FRANKLIN H. MACKEY,
Solicitors for Plaintiff.

38 *Decree Dismissing Injunction.*

Filed February 21, 1901.

In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } In Equity. No. 21895.

This cause coming on to be heard on the motion of the defendants to dissolve the injunction granted in this cause on the 24th day of November, A. D. 1900, and the court having considered the bill

of complaint and the answer of the defendants and the arguments of counsel for the respective parties, it is, this 12th day of February, A. D. 1901, adjudged, ordered, and decreed that the injunction granted against the defendants on the 24th day of November, A. D. 1900, be, and the same is hereby, dissolved and discharged.

A. C. BRADLEY, *Justice.*

Order Allowing Special Appeal.

Filed February 19, 1901.

In the Supreme Court of the District of Columbia, January Term, 1901.

JOHN H. MAGRUDER, Petitioner,
vs.
GRANT B. SCHLEY, ELVERTON R. CHAPMAN, Henry G. Timmerman, George F. Casilear, and T. Percy Myers.
} No. 87, Original Docket. Equity. # 21895.

Petition for allowance of a special appeal.

39 Upon consideration of the petition for the allowance of a special appeal from an order of the supreme court of the District of Columbia entered herein on the 12th day of February, A. D. 1901, it is now here ordered by the court that said appeal be, and the same is hereby, allowed on giving bond in the sum of two thousand ($2,000.00) dollars.

By the court:

R. H. ALVEY,
Chief Justice.

[SEAL.]

February 15, 1901.

A true copy.
Test: ROBERT WILLETT, *Clerk.*

Order for Record on Appeal.

Filed February 19, 1901.

In the Supreme Court of the District of Columbia, the 16th Day of February, 1901.

JOHN H. MAGRUDER, Appellant,
vs.
GRANT B. SCHLEY ET AL., Appellee-.
} In Equity. No. 21891.

The clerk of said court will prepare transcript of record on appeal and include therein the bill and answers and all motions and orders.

FRANKLIN H. MACKEY,
Sol'r for Pl'tff, Appellant.

Memorandum.

February 19, 1901.—Appeal bond filed.

40 In the Supreme Court of the District of Columbia.

JOHN H. MAGRUDER
vs.
GRANT B. SCHLEY ET AL. } No. 21895. In Equity.

The President of the United States to Grant B. Schley, Elverton R. Chapman, Henry G. Timmerman, George F. Casilear, and T. Percy Myers, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the Court of Appeals of the District of Columbia on the 15th day of February, 1901, wherein John H. Magruder is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 20th day of February, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 20 day of Feb'y, 1901.

T. PERCY MYERS,
Sol'r for Appellee.

41 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 40, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 21895, equity, wherein John H. Magruder is complainant and Grant B. Schley *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 26 day of February, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1066. John H. Magruder, appellant, *vs.* Grant B. Schley *et al.* Court of Appeals, District of Columbia. Filed Feb. 28, 1901. Robert Willett, clerk.